United Nations A/63/275

General Assembly

Distr.: General
13 August 2008

Original: English

Sixty-third session
Item 67 (b) of the provisional agenda*
Promotion and production of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Adequate housing as a component of the right to an adequate standard of living

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, submitted in accordance with Human Rights Council resolution 6/27.

* A/63/150 and Corr.1.

08-45956 (E) 120908

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

The present report, submitted in accordance with Human Rights Council resolution 6/27, constitutes the first report to the General Assembly of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

The first part of the report provides an overview of the work of the Special Rapporteur since the creation of the mandate by the Commission on Human Rights. It discusses the definition and the elements of the right to adequate housing and some of the main issues addressed by the Special Rapporteur since the inception of the mandate (including homelessness, affordability, forced evictions, discrimination in accessing adequate housing and the gender perspective), as well as the tools that have been developed to help in the implementation of this right (including questionnaires, indicators and the basic principles and guidelines on development-based evictions and displacement).

In the second part of the report, the Special Rapporteur, while stating her willingness to continue and develop the issues that have been identified by the previous mandate holder, gives her views on how the mandate should go forward and what are the areas to focus on in the coming years.

In the view of the consideration by the General Assembly of the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Special Rapporteur devotes the third part of the report to justiciability of the right to adequate housing based on examples and case law.

Finally, the Special Rapporteur urges States to take a number of immediate measures, including the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by the General Assembly; the integration of the right to adequate housing in urban planning and housing policies at local and national levels; and the adoption of urgent measures to address the plight of the homeless and in particular to stop their criminalization.

Contents

		Page
I.	Introduction	4
II.	Overview of the mandate, issues and achievements	4
III.	Moving the right to adequate housing forward: challenges and trends	9
	A. Mega-events	10
	B. Post-disaster and post-conflict reconstruction	10
	C. The impact of climate change on the right to adequate housing	11
	D. Migrants and housing	12
	E. Social inclusiveness	13
	F. Other activities	13
IV.	Justiciability of the right to adequate housing	14
V.	Conclusions and recommendations	19

I. Introduction

1. At its fifty-sixth session, the Commission on Human Rights adopted by consensus resolution 2000/9 of 17 April 2000 in which it decided to appoint, for a period of three years, a special rapporteur whose mandate would focus on adequate housing as a component of the right to an adequate standard of living. The subsequent resolutions of the Commission on the topic (2001/28, 2002/21, 2003/27 and 2004/21) were also adopted by consensus.

2. By its resolution 2002/49, the Commission entrusted the Special Rapporteur with the additional task of preparing a study on women and adequate housing (see para. 18 below).

3. In June 2006, the Commission on Human Rights was replaced by the Human Rights Council pursuant to General Assembly resolution 60/251. On 18 June 2007, the Human Rights Council adopted resolution 5/1, which extended the mandates of its thematic special procedures.

4. In December 2007, the Council reviewed the mandate of the Special Rapporteur on adequate housing. By its resolution 6/27, the Council renewed the mandate by consensus and requested the Special Rapporteur:

(a) To promote the full realization of adequate housing as a component of the right to an adequate standard of living;

(b) To identify best practices as well as challenges and obstacles to the full realization of the right to adequate housing, and identify protection gaps in that regard;

(c) To give particular emphasis to practical solutions with regard to the implementation of the rights relevant to the mandate;

(d) To apply a gender perspective, including through the identification of gender-specific vulnerabilities in relation to the right to adequate housing and land;

(e) To facilitate the provision of technical assistance;

(f) To work in close cooperation, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, the treaty bodies and regional human rights mechanisms;

(g) To submit a report on the implementation of the resolution to the General Assembly and to the Council.

5. The present report is submitted in accordance with that request.

II. Overview of the mandate, issues and achievements

6. Since the inception of the mandate, the Special Rapporteur has presented eight thematic annual reports to the Commission on Human Rights and the Human Rights

Council[1] and undertaken 13 country missions[2] as well as one joint visit with three other mandate holders[3]. The Special Rapporteur has been actively engaged with Government, civil society, academics, international and regional organizations and all other relevant actors in the field of adequate housing.

7. The previous mandate holder, Miloon Kothari, adopted an approach stressing the indivisibility of human rights and defined the human right to adequate housing as "the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity" (A/HRC/7/16, para. 4).

8. The elements of the right to adequate housing as defined by the Committee on Economic, Social and Cultural Rights in its General Comments No. 4[4] include (a) legal security of tenure, (b) availability of services, materials, facilities and infrastructure, (c) affordability, (d) habitability, (e) accessibility, (f) location and (g) cultural adequacy. Through his work and consultations the previous mandate holder identified more specific and additional factors that affect the enjoyment of the right to adequate housing, such as:

(a) Access to land, water and other natural resources necessary for survival and livelihood;

(b) Freedom from dispossession, damage and destruction to land, property, homes and resources and livelihood;

(c) Access to information that can impact the right to adequate housing such as potential industrial and natural hazards, infrastructure, planning design or availability of services and natural resources;

(d) Effective participation of individuals and communities in decision-making on issues that affect their right to adequate housing;

(e) Resettlement arrangements that, whatever the cause of displacement, are consensual, fair and adequate to meet individual and collective needs;

(f) Access to domestic legal protection and other remedies;

(g) A safe and secure environment (see also A/HRC/7/16, para. 5).

---

[1] E/CN.4/2001/51, E/CN.4/2002/59, E/CN.4/2003/5, E/CN.4/2004/48, E/CN.4/2005/48, E/CN.4/2006/41, A/HRC/4/18 and A/HRC/7/16.

[2] Romania (January 2002, E/CN.4/2003/5/Add.2); the Occupied Palestinian Territory (January 2002, E/CN.4/2003/5/Add.1); Mexico (March 2002, E/CN.4/2003/5/Add.3); Peru (March 2003, E/CN.4/2004/48/Add.1); Afghanistan (September 2003, E/CN.4/2004/48/Add.2); Kenya (February 2004, E/CN.4/2005/48/Add.2); Brazil (June 2004, E/CN.4/2005/48/Add.3); Islamic Republic of Iran (July 2005, E/CN.4/2006/41/Add.2); Cambodia (August 2005, E/CN.4/2006/41/Add.3); Australia (August 2006, A/HRC/4/18/Add.2); Spain (November-December 2006, A/HRC/7/16/Add.2); South Africa (April 2007, A/HRC/7/16/Add.3); and Canada (October 2007, A/HRC/7/16/Add.4).

[3] Joint mission to Lebanon and Israel with the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Representative of the Secretary-General on human rights of internally displaced persons (September 2006, A/HRC/2/7).

[4] www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument.

9. Since the inception of the mandate, the Special Rapporteur has worked on various areas of the human right to adequate housing and formulated recommendations for States, civil societies, international organizations and the international community. The work has mainly focused on the most vulnerable parts of a population. These groups include the homeless; people living in poverty or with low incomes; women; victims of domestic abuse and violence; children and orphans; youth; the elderly; people with disabilities and/or health problems (including people with complex needs such as those affected by HIV/AIDS); individuals and communities in rural and remote areas; minorities; indigenous peoples; internally displaced persons; migrants; and refugees and asylum-seekers.

10. Homelessness, as one of the most visible and severe symptoms of the lack of respect for the right to adequate housing, has been one of the main axes of work (see, for example, E/CN.4/2005/48). This phenomenon touches both developing and developed countries and its causes are diverse and multifaceted. They include a lack of affordable housing, speculation in housing and land, unplanned and forced urban migration and destruction and displacement caused by conflicts, natural disasters or large-scale development projects. Major market crises, including the subprime market crisis that originated in the United States in 2007, apart from their effects on financial market stability worldwide, also tend to increase the number of people living in homelessness and inadequate housing.

11. Although homelessness is the most acute sign of non-respect of the right to adequate housing, a considerable part of the world population lives in precarious and informal settlements, lacking access to basic services and adequate living conditions[5]. The impact of these precarious habitats, not administratively or legally recognized, goes beyond the material and environmental deprivation, preventing their inhabitants from the full enjoyment of a wide range of other human rights, whether civil and political or economic, social and cultural.

12. Affordability constitutes one of the main factors resulting in the violation of the right to adequate housing. In this context, the Special Rapporteur notes with concern that urban "gentrification" processes, accompanied by rising property values and rental rates, and problems in payment of loans and mortgages, are pushing low-income families into precarious situations, including homelessness. The failure of legal systems to protect homeless and landless people across the world is coupled with a tendency to criminalize them and appears to be part of the trend towards increasing violence against them.

13. While the Commission on Human Rights in its resolution 1993/77 recognized forced eviction as a gross violation of human rights, and particularly the right to adequate housing, it continues unabated in every continent. Forced eviction can be defined as acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.[6]

---

[5] According to UN-Habitat in its *State of the World's Cities* report for 2006-2007, more than one billion people, one third of the world population, live in precarious settlements.

[6] Basic principles and guidelines on development-based evictions and displacement, A/HRC/4/18, annex I, para. 4; www2.ohchr.org/english/issues/housing/evictions.htm.

14. Despite the work of a range of actors, including treaty bodies, other special procedures, United Nations agencies and programmes and civil society organizations to counter this practice, forced evictions continue to push hundreds of thousands into poverty, homelessness and inadequate housing conditions, with particularly adverse effects on children and groups facing discrimination such as women, indigenous peoples, minorities and migrants, and the socially and economically vulnerable and marginalized sectors of society (see E/CN.4/2004/48 and E/CN.4/2006/41).

15. In order to give States and the international community practical tools to prevent the violation of the right to adequate housing as a consequence of forced evictions due to development projects, the Special Rapporteur presented to the Human Rights Council a set of basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I). These guidelines provide step-by-step guidance before, during and after eviction to ensure respect for human rights in cases where there are no alternatives to eviction. They address various situations including evictions planned or conducted in apparent pursuit of the public good, such as those linked to development and infrastructure projects (including large dams; transportation, large-scale industrial or energy projects; or the development of mining and other extractive industries); land acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; or major international business or sporting events. The evictions can have ostensibly environmental purposes and arise from activities supported by international development assistance.

16. The work of the former Special Rapporteur focused in particular on discrimination in relation to the right to adequate housing (see E/CN.4/2003/5). The realization of the right to adequate housing in an environment free from discrimination will have a direct bearing on other congruent human rights, including the right to life, the right to an adequate standard of living, the right to freedom of movement and residence, the right to education and to health, the right to protection against arbitrary or unlawful interference with privacy, family and home and the right to participation in public affairs.

17. Discrimination and segregation in housing can be based not only on race, class or gender but can also result from poverty and economic marginalization. During various country visits, the former Special Rapporteur expressed concern regarding the continued discrimination faced by ethnic and religious minorities and nomadic groups, as reflected in the disproportionately inadequate housing and living conditions of those groups; the considerable number of alleged cases of discriminatory land confiscation and forced evictions; discrimination against women with respect to housing rights, land, inheritance and property; and the poor and limited quantity and quality of basic services provided to low-income groups and neighbourhoods and informal settlements. Forced evictions intensify inequality, social conflict, segregation and "ghettoization" and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society.

18. The mandate of the Special Rapporteur on adequate housing emphasized a gender perspective. By its resolution 2002/49 on women's equal ownership of, access to and control over land and equal rights to own property and to adequate housing, the Commission on Human Rights entrusted the Special Rapporteur with

the additional task of preparing a study on women and adequate housing. For this purpose, the former Special Rapporteur developed a questionnaire to solicit information from States, local authorities and civil society for the preparation of the study and organized seven regional consultations.[7] The result of this work and the main findings stemming from thematic research, country missions, regional consultations and replies to the questionnaire were presented by the Special Rapporteur to the Commission in three reports (E/CN.4/2003/55, E/CN.4/2005/43 and E/CN.4/2006/118). Several obstacles to the effective realization of housing rights for women were identified including violence against women; discriminatory family, personal, cultural and social norms; multiple discrimination; privatization of public housing stocks and unaffordability of housing for women; and the impact of natural disasters, forced evictions and HIV/AIDS on women.

19. Throughout his mandate, the former Special Rapporteur favoured a constructive approach to promote the human right to adequate housing. One of the means used was to develop concrete tools to help in the protection, promotion and implementation of the right to adequate housing, such as the above-mentioned basic principles and guidelines on development-based evictions and displacement.

20. Whether in his thematic reports or country missions, the former Special Rapporteur stressed the importance, as have numerous treaty bodies, of reliable and clear statistics and indicators to assess the progress made by States towards the realization of the right to adequate housing. Many of the more technical issues associated with this right are monitored by the United Nations Human Settlements Programme (UN-Habitat). UN-Habitat has worked out a set of key indicators designed to capture the essential elements of shelter-sector performance in all countries. These indicators emphasize the availability of basic services as an integral component of shelter adequacy. Other relevant factors include price, quantity, quality, supply and demand. Reports from Governments based on these indicators are to be prepared every two years for consideration by the Governing Council of the Programme. Related monitoring of the implementation of a global strategy for shelter is also coordinated by UN-Habitat. This process is designed to monitor action taken and progress made not just by States Members of the United Nations but also by agencies of the United Nations system as well as regional, bilateral and non-governmental actors.

21. While urging States to adopt such measurement tools, the former Special Rapporteur worked on and contributed to the creation of human rights-specific indicators (see for instance, A/HRC/4/18, paras. 3-15). Based on his work and the work undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) at the request of the international human rights treaty

[7] Asia Regional Consultation on the Interlinkages between Violence against Women and Women's Right to Adequate Housing (Delhi, India, October 2003); Latin America and Caribbean Regional Consultation on Women and Adequate Housing (Mexico City, December 2003), Middle East and North Africa Regional Consultation on Women's Right to Adequate Housing and Land (Alexandria, Egypt, July 2004); Pacific Regional Consultation on Women's Rights to Adequate Housing and Land (Nadi, Fiji, October 2004);[1]North American Regional Consultation on Women and the Right to Adequate Housing (Washington, D.C., October 2005); Central Asia/Eastern Europe Regional Consultation on Women's Right to Adequate Housing (Budapest, November 2005); and Mediterranean Regional Consultation on Women's Right to Adequate Housing (Barcelona, Spain, March 2006).

bodies,[8] the Special Rapporteur presented a list of illustrative indicators on the right to adequate housing in his 2007 report to the Human Rights Council (A/HRC/4/18, annex II). Subsequent work, including subregional workshops and consultations at country level, is ongoing. Work has been progressing on the compilation of meta-data on each indicator, whether structural, process or outcome indicators, which are to be reflected in "meta-data sheets", aimed at supporting the use of relevant statistics and at providing detailed information on their definition, rationale, method of computation, primary and secondary sources, level of disaggregation, periodicity, etc. (see A/HRC/7/16, paras. 52-54). The current Special Rapporteur strongly encourages this piloting and sensitization process supporting the development of contextually relevant and feasible statistical information on the implementation of the right to adequate housing at country level and recommends further collaboration with OHCHR and UN-Habitat in this area, including at country level.

III. Moving the right to adequate housing forward: challenges and trends

22. The Special Rapporteur would like to build upon and continue the important work of her predecessor. The Special Rapporteur wishes to acknowledge and commend the previous Special Rapporteur for his outstanding work; she will continue the efforts and activities initiated by him and build on the wealth of research, information and work he produced.

23. Adequate housing has been discussed in many international and specialized forums and has been recognized as an important basic human right. Yet, the existence of the right to adequate housing and its elements are still unknown to many. Although the mandate was fully recognized and extended by the Human Rights Council, its findings, tools and recommendations have not yet been widely disseminated and the human rights dimension of housing has not been incorporated in the work of most professionals, government officials and civil society activists involved in designing and implementing housing and urban and territorial planning policies around the world. This is mainly because the debate on the issue takes place in specialized circles and reports, information and other outcome documents are not easily accessible and understandable for a larger audience, especially right-holders.

24. Considering these challenges, the new Special Rapporteur will make an effort to disseminate to the different actors involved in housing and territorial planning the rights-based approach to housing developed by her predecessor, using different instruments and media.

25. The current mandate holder believes in the close interlinkages between the right to adequate housing and congruent human rights such as those concerning food, water, health, work, land, livelihood, property and security of person, as well as protection against inhuman and degrading treatment, non-discrimination and gender equality. The Special Rapporteur also believes that additional effort to strengthen these rights in national normative and judiciary systems is an important goal.

[8] HRI/MC/2008/3, www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.3EN.pdf.

26. In terms of new thematic areas to be explored in the coming years, the Special Rapporteur expects to focus her work on the relation between the organization of mega-events and housing policies, the right to adequate housing in post-conflict and post-disaster reconstruction, the effects of climate change on the right to adequate housing, migration and housing and issues of social inclusiveness, while continuing to develop practical tools to ensure a gender approach to the right to adequate housing.

A. Mega-events

27. The Special Rapporteur is particularly interested in the effect of mega-events, such as the Olympics, the FIFA World Cup or the Commonwealth Games, on the right to adequate housing. Mega-events such as the Olympic Games can be an opportunity to develop cities and infrastructure and potentially enhance the right to adequate housing. However, the organization of mega-events can also result in human rights violations. In the past, there have been many allegations of forced eviction of thousands of people from their homes to make place for infrastructures and city beautifications, sweeping operations against the homeless, increases in housing prices and rents, gentrification and so on. These issues have made organizers realize that embracing sustainability and the necessity to focus on protecting and promoting housing rights at all stages of the mega-events process, from the initial bid phase through the planning and preparation phases and the staging of the event to the post-event legacy.

B. Post-disaster and post-conflict reconstruction

28. The area of post-disaster and post-conflict reconstruction is of particular relevance to the mandate. Whether in natural disasters and their aftermath, or in countries recovering from the scourge of conflict, the need to integrate human rights standards into prevention, relief and rehabilitation efforts has been widely admitted. In many of these situations, the concerns raised include discrimination, not least on the basis of sex, and lack of participation, corruption and delay in the distribution of aid, compensation and reconstruction work. The Special Rapporteur is interested in studying how in practice these concerns have been incorporated in the work of national and international relief agencies, how financial aid and compensation is calculated and distributed and how situations in which there is a lack of secure title to housing and land have been dealt with.

29. A particular concern for the development of the mandate and its contribution to the work of multilateral and bilateral agencies is the existing gap between the humanitarian and the development phases in post-conflict or post-disaster reconstruction. Sometimes refugees or internally displaced persons reside in one place under emergency schemes for many years, consolidating socio-territorial ties in the new, nevertheless provisional settlements, making more complex their resettlement either in their territories of origin or new ones.

30. In this context, the Special Rapporteur welcomes the operational guidelines on human rights and natural disasters [1] developed by the Inter-Agency Standing

Committee,[9] which aim to assist States in developing policies to support persons affected by natural disasters and to protect their human rights and have a stronger human-rights approach, including on women's rights, than the Sphere guidelines.[10]

C. The impact of climate change on the right to adequate housing

31. Climate change and its causes have been largely debated and have lately become a front-line topic. Climate change has already affected millions of the world's poorest people and could result in hundreds of millions of people suffering loss of livelihood and permanent displacement.[11] But little has been said on the actual impact of climate change on human settlements and in particular on adequate housing. Natural disasters, desertification, drought and loss of livelihood lead — and will lead in the future — to increased displacement and force people and communities into distressed housing and living conditions.

32. In its fourth assessment report, the Intergovernmental Panel on Climate Change states with "very high confidence" that human activities since 1750 have caused global warming. For the next two decades, says the Panel, about 0.2 °C of warming per decade is projected.[12] Among the many knock-on effects are a sea-level rise of more than 50 centimetres by 2100. Climate change will have a number of impacts on biodiversity, from ecosystem to species level. The most obvious is the effect that flooding, sea-level rise and changes in temperature will have on ecosystem boundaries, affecting human settlements. Most of the people and enterprises at most serious risk from extreme weather events and rising sea levels are located in urban slums in low-income countries, where there is a combination of high exposure to hazards and inadequate protective infrastructure and services.[13]

33. Human-induced climate change is likely to affect the small low-lying island and coastal states, African nations, Asian mega-deltas and the polar regions. In Asia, Africa and parts of Latin America, it is common for half a city's population to live in informal settlements, lacking piped water supplies, paved roads, sewers, storm drains and household waste collection. Many such settlements are on flood plains or coasts, next to rivers or on unstable slopes, leaving their inhabitants at greatest risk from storms and floods.[14]

34. Increasing water stress and food scarcity in rural areas around the world are accelerating the rural-urban drift. For instance, UN-Habitat estimates that in the rapidly expanding slum settlements of Africa, about one third of slum dwellers have

---

[9] www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006_IASC_NaturalDisasterGuidelines.pdf.

[10] www.sphereproject.org.

[11] See United Nations Development Programme Human Development Report 2007/2008; and Intergovernmental Panel on Climate Change fourth assessment report, Working Group II report, "Impacts, adaptation and vulnerability", and synthesis report.

[12] Intergovernmental Panel on Climate Change, Climate Change and Water, June 2008, www.ipcc.ch/ipccreports/tp-climate-change-water.htm.

[13] Hannah Reid and Krystyna Swiderska, "Biodiversity, climate change and poverty: exploring the links", International Institute for Environment and Development, February 2008, www.iied.org/pubs/pdfs/17034IIED.pdf.

[14] Saleemul Huq and Jessica Ayers, "Critical list: the 100 nations most vulnerable to climate change", International Institute for Environment and Development, December 2007, www.iied.org/pubs/pdfs/17022IIED.pdf.

migrated to the cities after being driven off their land by advancing desert frontiers and failing pastoral farming systems due to environmental deterioration and climate change.[15] Factors pulling people to cities include access to the cash economy and improved access to services.

35. Much of the rural to urban movement exacerbates overcrowding in slums of urban centres. Many of the people who move to cities will do so as a result of increasingly inadequate access to sustainable livelihoods, and so will lack the resources to gain access to adequate housing. Those people will tend to be more at risk of the negative effects of climate change in cities; many for instance will be forced to build shelters on hazardous areas such as flood plains on the banks of rivers.

36. A rights-based approach to climate change will underline the principles of participation and empowerment. Populations whose rights are poorly protected are less equipped to understand or prepare for climate change effects, less able to lobby effectively for government or international action and more likely to lack the resources needed to adapt to expected alterations of their environmental and economic situation.[16]

37. Climate change issues have therefore to be considered in urban planning. Disaster and vulnerability reduction should be a feature of urban planning, which should be extended to slum areas and areas of informal settlement. Efforts should be made to ensure that everyone has access to adequate housing in the context of the weather events to which they could be exposed. Basic services, including health, water and sanitation services, should be disaster prepared and able to function adequately during weather events such as floods. There is also a need to construct more hazard-resistant housing for vulnerable communities.

38. A rights-based approach would also ensure that, while affected communities are able to relocate away from hazardous zones (e.g. sinking cities), all efforts are made to ensure adequate and genuine consultation with the communities before any relocation decision is taken. In no circumstances should individuals be subject to forced evictions. A rights-based approach accordingly brings a focus on participation in planning and decision-making and on access to information, as well as accountability.

D. Migrants and housing

39. In an increasingly multicultural world, international migrants contribute significantly to the economic and social development of destination countries. In spite of this, Governments look at migration essentially as a security issue to be handled through the police, and migration laws and admission procedures have steadily been tightened.

---

[15] Statement by Executive Director of UN-Habitat to the High-Level Segment of the United Nations Climate Change Conference, www.unhabitat.org/content.asp?cid=5502&catid=550&typeid=8&subMenuId=0.

[16] In the context of climate change, adaptation is taken to mean preparing for the unavoidable and foreseeable effects of climate change, while mitigation is seen as activities that reduce emissions in order to curb climate change. International Council on Human Rights Policy, "Climate change and human rights — a rough guide", 2008, p. vii.

40. At the local level, urban policies rarely include measures to facilitate the integration of migrants. Among such measures, access to housing and services are fundamental, since they address an essential need and represent the basis for full participation in society. Yet, migrants are often discriminated against in the housing market and they are likely to be housed in inadequate locations, in overcrowded conditions and with poor or inexistent facilities. To be effective, housing rights should be accepted at international level and explicitly incorporated into national legislation, and their legal effectiveness should be clearly defined. In fact, Governments often do not enforce the minimum standard of housing rights protection for migrants. In addition, the increasingly tight regulatory measures concerning access to the housing market by migrants recently adopted by many States contrast with the implementation of the right to adequate housing and to non-discrimination in this context.

E. Social inclusiveness

41. Across the world, problems in ensuring the affordability of housing, land and property are responsible for the increasing number of people who are pushed away from well-urbanized and well-located neighbourhoods into inadequate, insecure housing conditions on the periphery. Urban planning directed to creating so-called "world-class cities" rather than controlling speculation and reining in rising rental and home prices through appropriate land management tools have contributed to boosting property prices in cities and diverted land for higher-income groups.

42. The resulting creation of spatially separated settlements for the rich and the poor in urban and rural areas can be defined — as the previous Special Rapporteur described — as "urban and rural apartheid". Slums and squatter settlements arise in part from the colossal gap between supply and demand of affordable housing in well-located land and lead to discrimination, playing a strong role in keeping large groups in poverty and poor living conditions, with little access to opportunities for a better future. The result is fragmented and divided cities, with the erosion of social cohesion.

43. That is why the Special Rapporteur considers it necessary to look into the various issues linked with social exclusion and housing and the available tools and instruments to promote social inclusiveness in and through housing, not only to guarantee better living conditions but also provide greater options to prevent conflict and violence.

F. Other activities

44. The Special Rapporteur will also undertake a systematic assessment of the implementation of recommendations already addressed to States and other relevant actors. For instance, she will follow up on all recommendations identified as the result of country visits that have taken place since the inception of the mandate and continue the dialogue with relevant States on their efforts to implement and realize the right to adequate housing.

45. In this context, the Special Rapporteur reminds States of the recommendations made by the first mandate holder in his reports, in particular the report contained in document A/HRC/7/16, and would be keen to follow up on their concrete

application. The Special Rapporteur would be grateful to members of the General Assembly for providing her with information in this regard.

46. Based on this information and further studies and work, the Special Rapporteur will be in a position to provide States and other relevant actors with useful advice on implementing the right to adequate housing.

47. The Special Rapporteur will also seek, and count on, the cooperation and collaboration of all United Nations agencies, in particular UN-Habitat, and of other international and regional organizations as well as all relevant actors and will seek to integrate them as much as possible in the work of the mandate.

IV. Justiciability of the right to adequate housing

48. One challenge to the implementation of the right to adequate housing that the Special Rapporteur wishes to draw to the attention of the General Assembly is that of ensuring its justiciability. According to a commonly held view, political and civil rights are the only rights that generate prerogatives for the citizens and obligations for the State, as judicially enforceable. Housing, land and property tend to be viewed as marketable commodities rather than as a human right.

49. Access to a remedy in case of violation is an intrinsic feature of the concept of "right". Taking human rights seriously entails the provision of effective remedies and ensuring that alleged violations can be adjudicated by independent bodies — typically courts — capable of declaring that a breach has occurred and of ordering adequate relief.

50. There has, unfortunately, been considerable debate about the justiciability of economic, social and cultural rights in general, including the right to adequate housing. The overall assumption that economic, social and cultural rights are not justiciable has ignored the evidence of almost a century of functioning of labour courts and of abundant case law in such fields as social security, health, housing and education in all regions of the world.

51. Arguments questioning the justiciability of economic, social and cultural rights tend to assume that the content of these rights corresponds to a single formal pattern, with a unique trait that would identify all such rights as members of the same set. Yet, a review of any accepted list of economic, social and cultural rights, for example those enshrined in the International Covenant on Economic, Social and Cultural Rights or in regional instruments, would indeed show the opposite. Economic, social and cultural rights, as well as civil and political rights, are not limited to a single model but encompass a wide variety of aspects: freedoms, State obligations regarding third parties, State obligations to adopt measures or to achieve some result. In fact, the obligation to respect, protect and fulfil human rights means that in practical terms, every human right offers aspects which could be the subject of litigation and judicial adjudication.[17]

[17] See for instance Christian Courtis, "Courts and the legal enforcement of economic, social and Cultural Rights: comparative experiences of justiciability", International Commission of Jurists, Human Rights and Rule of Law Series N° 2, Geneva, 2008; Malcolm Langford and Aoife Nolan, "Litigating economic, social and cultural rights: legal practitioners dossier", Centre on Housing Rights and Evictions, December 2006 (www.cohre.org/store/attachments/COHRE%20Legal%20Practitioners%20Dossier.pdf); and www.cohre.org/litigation.

52. Moreover, the interdependence and indivisibility of all human rights entails the existence of close connections between different rights, regardless of the category to which they have been assigned. As a consequence, human rights present such strong connections that aspects of some rights can be the vehicle for the judicial protection of other rights.

53. These considerations apply fully to the right to adequate housing. Considerable progress has been achieved in the clarification of the content of the right to adequate housing, including through the elaboration of General Comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights[18] and the work of the Special Rapporteur as previously discussed. The present understanding of the right to adequate housing includes various kinds of duties, including some negative duties (i.e., the prohibition of forced evictions) and some positive duties (the adoption of legislative and other measures to ensure security of tenure, accessibility and affordability of houses, or the eradication of homelessness). It also stresses the fact that a number of duties stemming from the right to adequate housing are of an immediate nature — and not subject to progressive implementation — such as the prohibition of discrimination, the protection against forced evictions or protection from domestic violence, which is closely intertwined with access to housing.

54. It is important to note that the right to adequate housing also entails important connections with other human rights and principles, such as the prohibition of discrimination, the right to a fair trial and due process, the right to private and family life, the protection of property, the right to an adequate standard of living, the right to food, the right to health and the right to water.[19]

55. The clarification of the content of the right to adequate housing has also made apparent that many aspects of this right can be — and, in many jurisdictions, actually are — subject to judicial and quasi-judicial adjudication. Comparative jurisprudence at the domestic, regional and international level offers numerous illustrations of the justiciability of the right to adequate housing, as can be seen through a few examples of case law in this area.[20]

56. Protection against forced evictions has been an important focus of litigation in different jurisdictions. Courts and international treaty bodies have developed an important set of principles and procedural safeguards to prevent unwarranted evictions. The Supreme Courts of India and of Bangladesh have issued important decisions in this regard, underscoring the importance of the State's procedural duties

---

[18] See Committee on Economic, Social and Cultural Rights, General Comment No. 4, The right to adequate housing (E/1992/23), www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument; General Comment No. 7, Forced evictions, and the right to adequate housing (E/1998/22), www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument.

[19] See E/1992/23, para. 7: "The right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised." The Committee also mentions the right to housing as inextricably linked to other rights in different General Comments. See, for example, General Comment No. 14, The right to the highest attainable standard of health (E/C.12/2000/4), para. 11; General Comment No. 15, The right to water (E/C.12/2002/11), para. 3. In the same sense, see report of the Special Rapporteur, E/CN.4/2001/51 (making clear the need for a holistic approach regarding the right to housing, and stressing its interdependence and indivisibility with other civil, political, economic, social and cultural rights).

[20] Christian Courtis, note 17 above.

which must be complied with as a requisite for a lawful eviction.[21] For instance, the Supreme Court of Bangladesh ruled, in *ASK v. Bangladesh*,[22] that before carrying out a massive eviction from an informal settlement, the Government should develop a plan for resettlement, allow evictions to occur gradually and take into consideration the ability of those being evicted to find alternative accommodation. The Court also held that the authorities must give fair notice before eviction.

57. A decision of the Constitutional Court of South Africa also illustrates this point. In *Port Elizabeth Municipality v. Various Occupiers*[23] the Court declined to grant an order to evict 68 people squatting on privately owned land. The Court considered the request for eviction petition under three criteria — circumstances under which the unlawful occupier occupied the land and erected the structures; the period the occupier has resided on the land; and the availability of suitable alternative land — and concluded that, according to the circumstances of the case, the Municipality had not shown that it made any significant attempt to consider the problems of the occupiers.

58. The European Committee of Social Rights has also issued a number of decisions where it found that forced evictions had taken place and amounted to violations of different provisions of the European Social Charter. For instance, the Committee found violations of the housing rights of Roma communities, both by action and by omission. In the cases of *European Roma Rights Center v. Greece*, *European Roma Rights Center v. Italy* and *European Roma Rights Center v. Bulgaria*, the Committee considered, inter alia, that the practices of forced evictions and the lack of policies in place to accommodate the specific housing demands of the Roma groups amounted to violations of the rights to housing and social protection, in relation to the prohibition of discrimination.[24]

59. International human rights treaty monitoring bodies have also applied the prohibition of discrimination and the principle of equality to housing issues. The Committee on Racial Discrimination considered situations of violations of the right to adequate housing through discrimination on the basis of racial origin. In the case of *Ms. L. R. et al v. Slovakia*,[25] the Committee dealt with a municipal decision revoking a housing policy directed towards fulfilling the needs of the Roma population, finding that such revocation amounted to a discriminatory impairment of the right to housing based on grounds of ethnic origin.

60. Courts have also applied equality and anti-discriminatory protection regarding housing on different grounds. The United States Supreme Court struck down a municipal statute forbidding the establishment of a residence for persons with

---

[21] See Supreme Court of India, Olga Tellis & Ors v. Bombay Municipal Council [1985] 2 Supp SCR 51, 10 July 1985; Supreme Court of Bangladesh, Ain o Salish Kendra (ASK) v. Government and Bangladesh & Ors 19 BLD (1999) 488, 29 July 2001.

[22] See Supreme Court of Bangladesh, note 21 above.

[23] See Constitutional Court of South Africa, *Port Elizabeth Municipality v. Various Occupiers*, case CCT 53/03, 4 March 2004.

[24] See European Committee of Social Rights, *European Roma Rights Center v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004; *European Roma Rights Center v. Italy*, Complaint No. 27/2005, decision on the merits of 7 December 2005; *European Roma Rights Center v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006.

[25] See Committee on the Elimination of Racial Discrimination, *Ms. L. R. et al v. Slovakia*, Communication No. 31/2003, 10 March 2005.

intellectual disabilities, considering it discriminatory.[26] United States federal courts have repeatedly enforced the Fair Housing Act, which forbids discrimination against any person because of race, colour, religion, sex, disability, familial status or national origin.[27]

61. Courts have also dealt with the issue of affordability of housing, stressing the special consideration that securing housing tenure should have even in times of unstable economic conditions. The Constitutional Court of Colombia offers an important example: in a number of decisions that regarded the situation of thousands of debtors, it declared that a scheme to readjust mortgage payments was abusive and amounted to a violation of the constitutional right to housing.[28] Similarly, Brazilian courts have protected the rights of purchasers of dwellings against unjustified or abusive interest rates, through the application of provisions of the Consumer Code.[29]

62. The adoption of adequate measures to realize the right to housing has also been subjected to judicial scrutiny. For instance, in the famous *Grootboom* case, the Constitutional Court of South Africa employed a "reasonableness" test and concluded that the housing plan adopted by the Administration was unreasonable — and thus unconstitutional — because it did not take into account the situation of the most vulnerable groups.[30] Argentine courts found that a public refuge for homeless people did not meet adequate habitability conditions and ordered the Government to relocate its dwellers.[31] In the cases of *International Movement ATD Fourth World v. France* and *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, the European Committee of Social Rights decided, on different grounds, that the Government's policy regarding access to housing for the poorest members of the community and the measures to reduce homelessness were inadequate or insufficient, and thus amounted to violations of the right to housing.[32] For these decisions, the European Committee of Social Rights also relied on the work of the Special Rapporteur and the Committee on Economic, Social and Cultural Rights to deliver its decisions.

---

[26] See United States Supreme Court, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985).

[27] See, for example, United States District Court for the Eastern District of California, Consent Order entered in *United States v. Claiborne* (No. S-02-1099 DFL DAD) (E.D. Cal.) (2004), in a case of alleged discrimination on the basis of sex.

[28] See Constitutional Court of Colombia, *Sentencia* C-383/99, 27 May 1999; *Sentencia* C-700/99, 16 September 1999; *Sentencia* C-747-99, 6 October 1999; and *Sentencia* C-955/00, 26 July 2000.

[29] See, for example, Superior Court of Justice of Brazil, Recurso Especial N° 936.795-SC (2007/0066022-5), 8 April 2008, among many others.

[30] See Constitutional Court of South Africa, *The Government of the Republic of South Africa and others v. Irene Grootboom and others*, 2001 (1) SA 46 (CC), 4 October 2000.

[31] See Buenos Aires Administrative Court of Appeals, Chamber I, Pérez, Víctor Gustavo y Otros c. GIBA s/Amparo, 01/26/2001. The premises were flooded and infested with rats.

[32] See European Committee of Social Rights, *Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007 (www.coe.int/t/e/human_rights/esc/4_Collective_complaints/List_of_collective_complaints/CC33Merits_en.pdf); *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007 (http://www.coe.int/t/e/human_rights/esc/4_Collective_complaints/List_of_collective_complaints/CC39Merits_en.pdf).

63. Courts have also required Governments to take urgent measures regarding housing rights in cases of forced displacements. In a collective decision involving 1,150 families, the Constitutional Court of Colombia declared that the generalized failure of the Government to comply with the goals required by the law regarding, among others, the right to adequate housing amounted to an "unconstitutional state of affairs" and required them to adopt administrative and financial measures to adjust its action in order to provide immediate shelter to displaced families, refrain from applying coercive measures to return or resettle people and ensure a safe return to their places of origin.[33] Moreover, in order to monitor compliance with the decision, the Court ordered the Government to adopt a detailed system of indicators and held a number of public hearings.[34] Similarly, the Supreme Court of Nepal issued a directive order to the Government, requiring it to adopt a clear legal framework, consistent with the principles of equality and non-discrimination, ensuring the appropriate management of the services and facilities to be provided to the internally displaced, including those regarding housing.[35]

64. Comparative case law highlights the connection of the right to adequate housing with other human rights such as the rights to privacy, family life and home, the right to property, the freedom of movement and residence and the right to be free from torture and inhuman or degrading treatment.[36] Moreover, the right to adequate housing has also been protected in the domestic sphere through its relation with consumer rights or legislation regarding zoning.

65. Even in those legal systems where the right to adequate housing is not recognized as such, many components of the right have received indirect protection through its connection with other rights. Thus, for example, while the European Convention on Human Rights does not include the right to housing, the European Court of Human Rights has offered protection to housing rights through an array of different provisions of that Convention and of its Protocols. The European Court has held that forced evictions,[37] forced displacement and destruction of homes,[38] and the exposure of housing to unhealthy environmental conditions[39] may amount to a

[33] See Constitutional Court of Colombia, *Sentencia T-025/04*, 22 January 2004.

[34] See Constitutional Court of Colombia, *Auto 027/07*, 1 February 2007.

[35] See Supreme Court of Nepal, *Bhim Prakash Oli et al. v. Government of Nepal et al.*, 8 February 2006.

[36] Christian Courtis, note 17 above.

[37] See, for example, European Court of Human Rights, *Connors v. the United Kingdom*, 27 May 2004, paras. 85-95; *Prokopovich v. Russia*, 18 November 2004, paras. 35-45.

[38] See, for example, *Aakdivar and others v. Turkey*, 16 September 1996, para. 88; *Cyprus v. Turkey*, 10 May 2001 (rights of displaced persons, paras. 174-175); *Yöyler v. Turkey*, 10 May 2001, paras. 79-80; *Demades v. Turkey*, 31 October 2003, paras. 31-37 (article 8); *Selçuk and Asker v. Turkey*, 24 April 1998, paras. 86-87; *Bilgin v. Turkey*, 16 November 2000, paras. 108-109; *Ayder v. Turkey*, 8 January 2004, paras. 119-121; *Moldovan and others (2) v. Romania*, 12 July 2005, paras. 105, 108-110.

[39] See, for example, European Court of Human Rights, *López Ostra v. Spain*, 9 December 1994, paras. 51, 56-58; *Guerra and others v. Italy*, 19 February 1998, para. 60; *Hatton and others v. the United Kingdom*, 2 October 2001, paras. 99-107; *Taskin and others v. Turkey*, 10 November 2004, paras. 115-126; *Moreno v. Spain*, 16 November 2004, paras. 60-63; *Fadeyeva v. Russia*, 9 June 2005, paras. 94-105 and 116-134.

violation of the right to privacy, family life and home and to a violation of the right to property,[40] and even to inhuman and degrading treatment.[41]

66. Similarly, while the American Convention on Human Rights does not mention explicitly the right to adequate housing, the Inter-American Court of Human Rights found that forced evictions and displacement and destruction of homes constitute a violation of the right to property,[42] the right to freedom from interference with private life, family, home and correspondence[43] and freedom of residence and movement.[44]

67. While domestic jurisdictions and some regional human rights systems provide remedies when violations of the right to adequate housing occur, protection in the universal human rights system is still incomplete: it is limited to indirect protection — through the connection with other human rights — and to those cases where discrimination regarding housing rights occurs on the basis of race, gender, migration or disability. The adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will extend similar protection to all other cases of violation of the right to housing by allowing victims to submit communications to the Committee on Economic, Social and Cultural Rights. The Special Rapporteur strongly encourages the prompt adoption and ratification of the Optional Protocol, which will help to further clarify the content of the right to adequate housing and of State obligations in this regard, will offer victims redress at the universal level and will offer visible international standards that could inspire judicial decisions at domestic level.

V. Conclusions and recommendations

68. The Special Rapporteur would like to take the opportunity of this first report to the General Assembly to formulate a number of initial recommendations to States.

69. Implementation and realization of the right to adequate housing requires States to include provisions on the protection, fulfilment and justiciability of this right in their national and constitutional law.

---

[40] See, for example, European Court of Human Rights, *Aakdivar and others v. Turkey*, 16 September 1996, para. 88; *Cyprus v. Turkey*, 10 May 2001 (rights of forcefully displaced persons, paras. 187-189); *Yöyler v. Turkey*, 10 May 2001, paras. 79-80; *Demades v. Turkey*, 31 October 2003, para. 46; *Xenides-Arestis v. Turkey*, 22 December 2005, paras. 27-32; *Selçuk and Asker v. Turkey*, 24 April 1998, paras. 86-87; *Bilgin v. Turkey*, 16 November 2000, paras. 108-109; *Ayder v. Turkey*, 8 January 2004, paras. 119-121. In *Oneryildiz v. Turkey*, 30 November 2004, the Court decided that the applicant's proprietary interest in a precarious hut built irregularly on State-owned land was of a sufficient nature to be considered a "possession" in the sense of article 1 of Protocol No. 1.

[41] See European Court of Human Rights, *Yöyler v. Turkey*, 10 May 2001, paras. 74-76; *Selçuk and Asker v. Turkey*, 24 April 1998, paras. 77-80; *Bilgin v. Turkey*, 16 November 2000, paras. 100-104; *Moldovan and others (2) v. Romania*, 12 July 2005, paras. 111, 113 and 114.

[42] See Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, 15 July 2005, paras. 127-135; *Ituango Massacres v. Colombia*, 1 July 2006, paras. 175-188.

[43] Ibid., paras. 189-199.

[44] See Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, 15 July 2005, paras. 107-121; *Mapiripán Massacre v. Colombia*, 15 September 2005, paras. 168-189; *Ituango Massacres v. Colombia*, 1 July 2006, paras. 206-253.

70. In light of the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Special Rapporteur encourages States to consider ratification of the new instrument without reservation or delay.

71. The Special Rapporteur also urges States to include and fully integrate the right to adequate housing in urban planning and housing policies both at local and national levels.

72. In view of the increasing number of homeless people both in developed and developing countries, the Special Rapporteur urges States to take homelessness seriously and take immediate measures to address the plight of those people who have been forced into homelessness.

73. In particular, the Special Rapporteur urges States:

(a) To undertake, as a matter of urgency, every possible effort to promptly increase the number of adequate shelters for the homeless and provide different options for assistance including hostels, boarding houses, rental and cooperative units, land sharing and other adequate forms of shelter, taking into account the needs and specificity of this vulnerable section of the population;

(b) To refrain from any action that could push people into homelessness, including in cases of evictions, whether considered legal or illegal under national law, taking into account that evictions should not result in homelessness according to the prohibition on forced evictions under international human rights law;

(c) To stop the adoption of — or repeal — any legislation or measures that criminalize homeless people.